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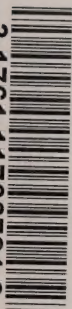
DEPARTMENT OF JUSTICE

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A Sustainable Future In The Balance



Department of Justice
Canada

Ministère de la Justice
Canada

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Message From The Minister of Justice

I am pleased to present this Sustainable Development Strategy to members of Parliament, to the employees of the Department of Justice, to our clients and the legal community generally, and to the Canadian public. Motivated by the principles developed by the 1987 Brundtland Commission and the 1992 Rio 'Earth Summit' on Environment and Development, this strategy reflects the views of our staff and stakeholders, experts and citizens, who share our concern for providing a sustainable future for our children.



A sustainable future requires more than the protection of the environment -- social equity and economic well-being are also essential dimensions. As we approach the 21st century, our society must balance these factors that so often have been dealt with separately. For example, economic prosperity depends upon a supply of natural resources and innovative, efficient ways to use them. Community peace and personal well-being are based upon respect for rights and obligations, secure education and jobs, and fair distribution of our society's wealth. Public health requires environmental quality, clean air, food and water.

The challenge of sustainable development is to ensure that we integrate all three of these goals -- social justice, economic prosperity, and environmental quality -- in everything we do and in every decision we make. Government has an important role to play in ensuring that we do this.

The Department of Justice can usefully contribute to quality of life, integrated decision-making, and equity -- three cross-cutting elements identified in the *Guide to Green Government*, which has guided the preparation of our Sustainable Development Strategy. Legal processes and mechanisms can enable access to information, public participation, scientific assessment, and the integration of economic, social, and environmental objectives in government decision-making. Beyond the practical "greening" of internal operations, the Department's Sustainable Development Strategy sets out policy and program objectives to promote research, raise awareness, and support law reform to promote sustainable development more effectively.

A sustainable future is in the interest of all Canadians. I urge all partners in the Justice system and indeed all Canadians to meet the challenge of sustainable development.

A handwritten signature in dark ink, reading "A. Anne McLellan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

A. Anne McLellan

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Executive Summary

This Sustainable Development Strategy (SDS) was prepared by the Department of Justice as required by the 1995 amendments to the *Auditor General Act*.

The Department of Justice intends to meet the challenge facing all federal departments to understand, develop and implement ways to integrate the concept of sustainable development into its work and decision-making.

Simply defined, “sustainable development” means using our natural and human resources to achieve social and economic goals without harming the environment upon which we and future generations depend. It is a multi-faceted, overarching concept, which integrates concerns for environmental quality, social justice, and economic prosperity.

Beyond the practical “greening” of internal operations through reduced use and waste reduction, this strategy deals with the full range of the Department’s policies and programs. These policies and programs are particularly relevant to three of the key, cross-cutting elements of sustainable development identified in *A Guide to Green Government*: quality of life, equity, and integrated decision-making.

The Department has a potentially significant impact on sustainable development through the legal advice it provides to its clients, both concerning existing laws and policies and concerning law and policy reform. The demand for this work will increase as a result of the promulgation of Sustainable Development Strategies by most of the Department’s client departments and agencies. Within the context of client service agreements and within available resources, the Department of Justice will serve those demands.


An important objective for government is to enhance the degree to which decision making systematically

and explicitly integrates economic, environmental and social considerations. As a service organization, driven primarily by the needs and demands of its clients, the Department of Justice will ensure that it responds effectively and proactively to the anticipated increase in demand from its clients for legal advice related to sustainable development. To support this need, Justice Canada will emphasize five objectives. The sixth objective addresses the stewardship actions concerning the Department’s physical operations.

SDS Objectives:

1. Enhance the Department’s capacity to promote sustainable development by improving the awareness and knowledge of the relevant issues by Departmental staff.
2. Improve the Department’s understanding of the linkages between sustainable development and its legal, policy and programmatic services.
3. Identify and advise on the legal status and significance of the federal government’s domestic and international obligations related to sustainable development.
4. Support law reform to enable the federal government to promote sustainable development more effectively.
5. Through a sustainable development network, ensure that the legal advice the department provides to the federal government on sustainable development issues is consistent and of high quality.
6. Reduce the Department’s direct environmental impact through stewardship and environmental management activities.

The implementation of these objectives will require a variety of actions by all parts of the Department, as described in this Sustainable Development Strategy.



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1.0 Introduction

1.1 Requirement for a Sustainable Development Strategy

The Department of Justice is required by the 1995 amendments to the *Auditor General Act* to prepare a sustainable development strategy (SDS) for tabling in the House of Commons by December 15, 1997, and to update the strategy at least every three years. The same amendments created the position of Commissioner of the Environment and Sustainable Development within the office of the Auditor General. The Commissioner will monitor and report to the House of Commons on the extent to which federal departments, including the Department of Justice, meet the objectives and implement the actions set out in their respective SDSs.

The Department of Justice intends to meet the major challenge facing all federal departments to find practical and meaningful ways to integrate the concept of sustainable development into its work and how it makes decisions.

1.2 The Meaning of Sustainable Development

Simply defined, “sustainable development” means using natural and human resources to achieve social and economic goals without harming the environment upon which current and future generations depend. It is a multifaceted, overarching concept. At its core, it requires integration of environmental and distributive justice considerations in ongoing economic and social decision-making.

Sustainable development is not a fixed state of harmony, but rather an ongoing process of evolution in which people take actions to achieve social and economic goals while maintaining the health of the environment. It strives for both human and ecosystem well-being, not one at the expense of the other. It recognizes the interdependence of people and their surrounding world.

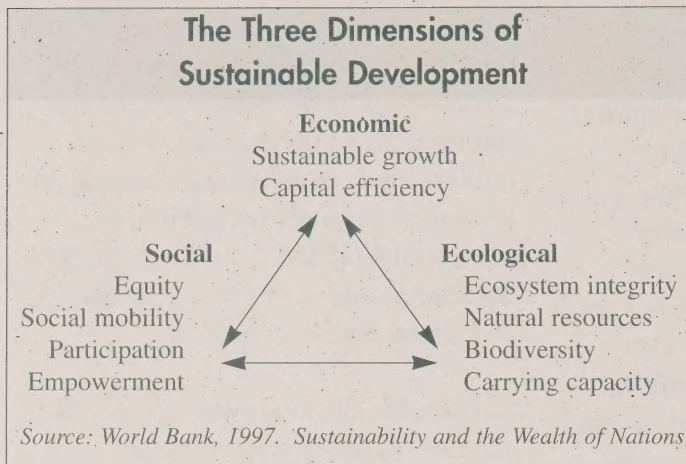
For the Department of Justice, sustainable development means adopting business strategies and activities that meet the needs of the institution and the public it serves while protecting, sustaining and enhancing the human and natural resources that will be needed in the future.

Sustainable Development

The most widely used definition of sustainable development provided by the World Commission on Environment and Development (The Brundtland Commission) in 1987 is now used in the *Auditor General Act*:

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Sustainable development has three pillars or dimensions: social, economic and environmental. These three dimensions are interconnected, as depicted in the diagram below.



Within the conceptual framework of sustainable development, government has an important role to serve and support its society's overarching aims for social justice, economic prosperity and environmental quality. As a department with a mandate focused upon the social dimension, the contribution of the Department of Justice to a more sustainable future therefore requires integration of environmental and economic considerations into its decision-making. Concomitantly, departments with an economic focus will be required to better integrate environmental and social concerns; and those with primarily an environmental mandate will need to consider the social and economic aspects and impacts of their decision-making.

Sustainable development is a normative ethical concept which, like the law, is based upon the values of people viewing and applying it. Its precise meaning therefore depends in part on prevailing social values and interpretations. The federal government has applied the concept of sustainable development to itself in *A Guide to Green Government*, a document signed by 24 Ministers to guide preparations of Sustainable Development strategies. The Guide sets out important government-wide goals and objectives to which the

Emerging Sustainable Development Principles

Five core elements common to most current definitions of sustainable development:

- 1) respect for ecological integrity;
- 2) efficient use of human, financial and natural resources;
- 3) equity;
- 4) participatory decision-making; and
- 5) environmental stewardship at all levels of society.

(Resource Futures International, *Law Reform and Sustainable Development*, Department of Justice Law Reform Project, 1995)

Department of Justice is committed to contribute within its mandate. The government-wide vision and general objectives are encapsulated in Figure 1.

Figure 1: Government-Wide Vision, Goals and Objectives for Sustainable Development

<i>Vision:</i>	A more sustainable society for the future		
<i>Dimensions:</i>	Environmental Quality	Social Justice	Economic Prosperity
<i>Goals:</i>	Clean environment	Community peace and security	Stable employment
	Diverse resources	Equitable distribution of benefits & costs	Less poverty
	Public health		
<i>Objectives:</i>	To sustain our natural resources	To promote equity	To improve quality of life and well-being
	To protect health	To protect human rights and freedoms	To improve productivity & environmental efficiency
	To meet our international obligations		To support innovation

Source: A Guide to Green Government

1.3 Law and Sustainable Development

Three of the cross-cutting elements identified in the *Guide to Green Government* are particularly relevant to the mandate and activities of the Department of Justice: *quality of life*, *integrated decision-making* and *equity*.

- *Quality of life* is provided by economic prosperity, social justice and environmental quality. For an economy that performs well for job creation, improved living standards, health, education, and protection of environment, Canadians depend upon the private market, public institutions and individuals to act within applicable laws and regulations.

- To reconcile economic, social and environmental objectives requires *integrated decision-making* through processes and mechanisms, often expressed in law, which facilitate 'full-cost accounting', environmental impact assessment, ecosystem-based planning and management, sound science and analysis, public participation and access to information.
- *Equity* is a major preoccupation of legal institutions and processes. As a key element of sustainable development, equity involves respect for basic rights and

The Sustainable Society Project

A collaboration of academics, governments, and private citizens between 1988-1994 developed guidelines based on a process of envisaging Canadian society in fifty years. Project participants emphasized that law is central to the social dimension of sustainable development and can help safeguard basic rights and obligations through an open, accessible, and fair political process; it can create opportunities for sufficient resources and personal security through education and employment; and it can help promote social equity and justice.

Source: *Planning for a Sustainable Future, Projet de Société, 1994*

obligations, and the fair distribution of the costs and benefits of development between the rich and the poor, between generations, and among nations.

Law can be an important mechanism for promoting sustainable development. Legislation and regulation can promote *ideas* in the form of objectives, principles and criteria that are

consistent with sustainable development. The enabling legislation for the Departments of Natural Resources Canada and Industry Canada now both explicitly oblige

those organizations to promote sustainable development. Similarly, laws and regulations can articulate sustainable development related principles and criteria for which decision makers must account.

Natural Resources Canada Act

s. 6 In exercising the powers and performing the duties and functions assigned to the Minister ... the Minister shall

(a) have regard to the **sustainable development** of Canada's natural resources and the integrated management thereof; ...

Law can also mandate *processes* to allow for the effective articulation of sustainable development considerations and objectives by a wide range of interested parties. Achieving progress toward sustainable development is clearly a matter of social choices, ranging from individuals to governments. Because it involves choice, change is only possible with the broad involvement of the general public and decision-makers in government and across society. The law can provide more effective processes for assessment and decision-making, allowing a wide range of insights to inform decision-makers.

Law can also create *institutions* to enhance the promotion of sustainable development. Legislated institutions such as the National Round Table for Environment and Economy and the

Commissioner for Sustainable Development and Environment can serve as focal points for the expression and debate of sustainable development issues, and can help remind decision-makers of the importance of this concept.

Sustainable development is a shared responsibility, requiring market, institutional and political forces to cooperate and contribute their various strengths to apply a combination of policy tools, which are often best enshrined in law to be effective.

Using a Mix of Tools to Achieve Sustainable Development

Voluntary Approaches

agreements • codes of conduct • guidelines • performance standards

Information

eco-labelling • technology transfer • quality standards

Economic Instruments

tax incentives • user charges • permits

Direct Government Spending

where the market cannot provide public goods

Command and Control

enforcement of laws and regulations

Source: A Guide to Green Government

2.0 Sustainable Development and The Department of Justice

The Department of Justice is responsible for conducting the legal affairs of the Government of Canada as a whole, and for providing legal services to individual departments and agencies. The Department operates through the following main activities, described in more detail in the **Departmental Profile, Annex A** to this document:

- **Government Client Services** include 35 Departmental Legal Service Units that are located at client departments and agencies, the Legislative Services Branch that provides drafting services and support for regulations and legislation, and the central and regional offices that provide legal advisory services and conduct litigation and prosecutions on behalf of the government.
- **Law and Policy Services** ensure a responsive, fair, efficient and accessible national system of justice. The Policy Sector addresses criminal law; family, children and youth; and public law, including human rights. It develops policies on firearms, child support, legal aid, young offenders and public legal education. It also examines federal laws and regulations to ensure consistency with the

Canadian Bill of Rights and the *Canadian Charter of Rights and Freedoms*.

- **Administration and Operations** provide corporate, personnel and information management services to support the Department's program delivery, internal administration and communications.

The strategic directions of the Department of Justice

already include working toward an integrated justice system that is cost-effective, citizen-centred and community-focused, making it more equitable and accessible, and strengthening public confidence and trust in the justice system. By providing mechanisms to enable public participation in decision-making, access to information, and integration of key dimensions into government decisions, the legal system can significantly contribute to laying the foundation for a more sustainable future.

The Department also has the potential to significantly impact on sustainable development through the legal advice it provides to its clients, both concerning existing laws and policies and concerning law and policy reform. As the concept of sustainable

Access to Law

The Department of Justice is playing a proactive role to facilitate increased public access to the law. With the leadership of an Access to the Law committee several legal instruments and useful tools have been made available on the Internet:

- federal Statutes and Regulations, an annotated *Access to Information Act* and *Privacy Act*
- summaries of major court decisions on the *Canadian Charter of Rights and Freedoms*
- legal education documents.

Various services in the Department are considering making more accessible other items of interest to the public.

development becomes increasingly salient in contemporary policy discourse, it is anticipated that the requirement for sustainable development related legal work will increase. The demand for this work will also increase as a result of the promulgation of sustainable development strategies by most of Justice's client departments and agencies.

Although sustainable development is a normative concept -- and therefore subject to varying opinions as to its appropriate content -- at its core lies the objective of integrating economic, environmental and social considerations. In short, it recognizes that, over time, society cannot pursue one of these goals at the expense of the others; rather, these objectives are inter-related and must be addressed together.

Accordingly, an important objective for government should be to enhance the degree to which decision-making systematically and explicitly integrates economic, environmental and social considerations. As a service organization, driven primarily by the needs and demands of its clients, the Department of Justice's main requirement in this regard is to ensure that it responds effectively and proactively to the anticipated increase in demand from its clients for legal advice to help promote sustainable development through integrated

decision-making. Within the context of client service agreements, and within available resources, the Department will serve these demands.

This will require various functions and activities, including gathering and disseminating information, initiating and managing research, monitoring and coordinating activities, and liaising with client departments and the Office of the Auditor General. These functions are reflected in the first five objectives below. The sixth objective then focuses upon the stewardship actions concerning the Department's physical operations.

SDS Objectives

1. **Enhance** the Department's **capacity** to promote sustainable development by improving the awareness and knowledge of the relevant issues by Departmental staff.
2. **Improve** the Department's **understanding of the linkages** between sustainable development and the Department's legal and policy services.
3. **Identify and advise** on the legal status and significance of the federal government's **obligations** related to sustainable development.
4. **Support law reform** to enable the federal government to promote sustainable development more effectively.
5. Through a sustainable development network, **ensure** that the **legal advice** the Department provides to the federal government on sustainable development issues is **consistent and of high quality**.
6. **Reduce the direct environmental impact of** the Department's **operations** through stewardship and environmental management activities.

SDS objective #6 is distinct from SDS objectives #1 to #5 by its focus upon physical operations. Like all federal departments and agencies, the Department of Justice's operations have a direct environmental impact through, for example, the use of energy to light buildings, the vehicles its employees use, and the paper use for which lawyers are notorious.

The Department's Sustainable Development Strategy objectives and actions are summarized in the following chart according to the Department's business lines and functions. Each objective is then discussed in detail, with enumerated actions.

Department of Justice Sustainable Development Strategy: Objectives and Actions

SDS Objectives DOJ Functions	Objective 1: Enhance Capacity	Objective 2: Identify Linkages Between SD and Law	Objective 3: Identify and Advise on Government's SD-Related Legal Obligations	Objective 4: Assist SD-Related Law Reform	Objective 5: Ensure Consistent and High Quality Legal Advice Related to SD	Objective 6: Green Operations and Procurement
	<ul style="list-style-type: none"> Ongoing information and education Training on implementation of international obligations in domestic law 	<ul style="list-style-type: none"> Research on linkages between law and SD (e.g. co-sponsor publication with Canadian Bar Association) Through the SD network, identify key relationships between SD and Justice's mandate Explore opportunities for collaborative research on 'SD and law' with Law Commission 	<ul style="list-style-type: none"> Through the SD network, and in cooperation with clients and the Office of the Auditor General - Commissioner for Environment and Sustainable Development, help determine the Federal Government's SD-related legal obligations from domestic and international sources. Regularly update information on SD legal obligations Add 'SD and law' module to Legal Awareness Program 	<ul style="list-style-type: none"> Review statutes for inefficiencies and identify barriers to access to the justice system Assist client departments review statutes they administer 	<ul style="list-style-type: none"> Establish SD network Work with other departments on cross-cutting SDS issues Develop guide or checklist for incorporating SD considerations in advice and drafting Review need for prosecution guides for environmental and resource laws Encourage integrated approach to legal advice on international law Provide assistance on law and legal institutions to developing countries 	<ul style="list-style-type: none"> Apply the 4Rs to work areas: reduce, reuse, recycle, recover
Legal Services to Other Departments (DLSUs), Central Legal Services (SLAS) and Property Law	<ul style="list-style-type: none"> Review clients' legal priorities as expressed in such documents as their SDSs to anticipate legal demands 		<ul style="list-style-type: none"> Research and advise on SD commitments of clients Continue to ensure legal advice reflects government's SD obligations Cooperate with OAG study on international SD obligations 	<ul style="list-style-type: none"> As agreed with clients, advise on reform of legal instruments inconsistent with SD Promote use of alternatives to command and control regulations 	<ul style="list-style-type: none"> Designate SD coordinators as part of network Develop and use standard forms for property and other transactions that reflect SD considerations Add SD to agenda of International Law Coordination Committee 	

Legislative Drafting				<ul style="list-style-type: none"> Continue to ensure 'legal drafting is consistent with government's SD obligations' 	<ul style="list-style-type: none"> Help clients amend laws, as requested' 	<ul style="list-style-type: none"> Apply guidelines for incorporating SD into statutes and regulations 	
Litigation						<ul style="list-style-type: none"> Continue to promote more efficient justice system and use of dispute resolution 	
Policy	<ul style="list-style-type: none"> Include SD, where appropriate, in public legal education and information 	<ul style="list-style-type: none"> Contribute to research, including research required by inter-departmental Policy Research Committee 				<ul style="list-style-type: none"> Incorporate SD into Policy Project Plan checklists 	
Communications	<ul style="list-style-type: none"> Help prepare and disseminate SD Information resources 					<ul style="list-style-type: none"> Include SD-related items in Justice Communications briefings to management and staff 	<ul style="list-style-type: none"> Provide information on 'green' operations
Corporate Management, Information Management, Human Resources and Continuing Legal Education	<ul style="list-style-type: none"> Support SD education & training Improve information management SD module in continuing legal education 						<ul style="list-style-type: none"> Reduce gaseous emissions by actions such as telework Reduce liquid effluent and solid waste Revise environmental management system

Objective 1: Enhance Departmental Capacity

Objective

To enhance the capacity of the Department of Justice to provide legal advice related to sustainable development to client departments and agencies.

Rationale

Along with its responsibilities for legally advising and representing the government and administering Canada's legal system, one of the Department's main functions is to provide legal advice to other federal departments and agencies. It is expected that the demand for advice either directly or indirectly related to sustainable development will increase over the near future. To continue to serve the needs of their clients, Justice employees therefore need to enhance their knowledge of sustainable development (see **Annex D** to this document for a **Further Reading** list).

Actions

- 1.1 In order to enhance awareness of sustainable development, the Department will develop means to provide ongoing information about sustainable development to its employees tailored to their needs, roles and responsibilities. This will include the dissemination of information through the SD network, the development of an SD 'home' page on the upcoming Department of Justice intranet, and the inclusion of SD information in existing departmental publications and public legal education documents.

Measuring and Valuing Environmental Damages

In a recent case, a court calculated the compensation owing to an Indian band from a trespassing timber company to be only the export market value of the logs sold minus the costs incurred by the company in wrongly cutting the trees on the band's land: no account was taken of the value of the former forest for watershed protection, biodiversity, wildlife and hunting game habitat, recreation, amenity and the spiritual health of the band.

Economists have developed a number of increasingly well-accepted techniques to help measure the value of non-marketed environmental services, including contingent valuation, replacement cost estimation, and surrogate markets. Lawyers who advise clients, prosecutors who make arguments in court, and the judges who hear them need to be familiar with, and--during the Departmental SDS consultations--have expressed an interest in learning about, environmental valuation techniques in order to more effectively account for such considerations in their advice and decision-making. These **consultations** are described in **Annex B** to this document.

- 1.2** In order to enhance awareness and expertise with respect to the legal dimensions of sustainable development, the Department will incorporate a sustainable development module into its Continuing Legal Education Program. This training will be made available across the Department, to lawyers and other staff, including all legal service units and regional offices.

These information and education activities will be produced and coordinated by a Departmental sustainable development network coordinator and disseminated with the assistance of the Communications and Executive Services Branch and relevant sectors.

The Continuing Legal Education Program

Through the Legal Education Division (LED), housed in the Corporate Management Sector, the Department develops and delivers new and continuing legal education courses and materials for its professional staff. The LED collaborates with the Human Resources Directorate, which prepares the management training program.

The Program provides an excellent vehicle for increasing awareness of sustainable development issues as they relate to the law. Courses and materials are developed by lawyers, for lawyers in the Department. Courses currently cover a wide range of legal topics such as contracting, property, public and human rights law, and could be expanded as required to include modules on sustainable development.

- 1.3** The Department also will provide training courses to lawyers practising in the field of domestic law on:

- how to implement international obligations into domestic law, including sustainable development obligations, and
- the importance of domestic law enforcement to meet international obligations.

- 1.4** In order to anticipate the demand from client departments and agencies, each legal services unit will review its client's legal priorities, within the context of the Client-Driven Services exercise, as expressed in such documents as their SDSs as well as their mandate statutes, for indications of legal requirements related to sustainable development. These requirements will be covered in service agreements between the Department and its clients. It is expected that they will include, at a minimum:

- advice on enshrining into law mechanisms to address barriers and disincentives to sound environmental management; and
- advice with respect to legal and regulatory reform activities to be initiated as part of the departmental SDSs.

Objective 2: Improve The Department's Understanding Of The Linkages Between Sustainable Development And The Department's Legal and Policy Services

Objective

To conduct and support research to identify the key linkages between sustainable development and Justice Canada's services.

Rationale

The Department currently undertakes considerable work on topics relevant to sustainable development, especially its social dimension. The Department plays a particularly important role with respect to the Federal Government's efforts to promote social justice through its work on subjects as diverse as human rights, gender equality and crime prevention. It promotes economic efficiency through its efforts to improve the cost effectiveness of the justice system through such initiatives as promoting alternative dispute resolution and court reform. It also enhances environmental protection and economic efficiency through the advice it provides in developing new

environmental legislation and in exploring and promoting the use of alternatives to command and control regulation.

Little if any of this work, however, is explicitly linked to the objective of promoting sustainable development. The extensive consultations held within the Department on the development of this Strategy (see **Annex B on consultations**) indicate interest in increasing understanding of sustainable development and its impact on Departmental activities. The practical significance of sustainable development for the type of legal advice and policy development work that lies at the core of the Department's activities therefore requires further research and education. Where possible, such research and education will be done in collaboration with relevant partners.

Actions

2.1 The Department will undertake and sponsor, through its SD network and in conjunction with the Policy Sector, relevant Legal Services Units, interested client departments and the Office of the Auditor General, research into the linkages between sustainable development and its legal and policy activities.

2.2 The Department will collaborate with, and provide funding for a Canadian Bar Association initiative to research and prepare a publication on the linkages between sustainable development and the law, following up a previous Justice-funded publication by the Canadian Bar Association *Sustainable Development in Canada: Options for Law Reform*, 1990.

2.3 The Department will explore and identify, together with the newly established Law Commission, which issues regarding law and sustainable development could be researched collaboratively.

2.4 Through its representation on the government-wide Policy Research Committee which addresses important horizontal issues through four networks (on human development, the knowledge-based economy, social cohesion and economic growth), the Department will contribute, as appropriate, to government-wide policy research on sustainable development.

The Aboriginal Justice Strategy: Contributing to the Social Dimension of Sustainable Development

One example of how the Department of Justice provides the lead in the social dimension of sustainable development is through its Aboriginal Justice Strategy (AJS). The AJS has three objectives:

- i) to respond to the aspirations of Aboriginal people to assume greater responsibility for the administration of justice in their communities;
- ii) to help reduce the rates of crime and incarceration among Aboriginal people; and,
- iii) to foster improved responsiveness, fairness and inclusiveness of the justice system for aboriginal people.

The AJS provides assistance in self-government initiatives and specific claims negotiations, support for pre-charge and post-charge diversion programs, community sentencing alternatives, community mediation and dispute resolution in civil and family matters, and support for local justices of the peace and tribal court models.

The AJS complements the federal government's policy on Aboriginal self-government by helping communities, including Metis and Indian groups with no land base, develop justice systems. Consistent with sustainable development, these measures promote community peace and security, and seek to protect human rights for both the Aboriginal and non-Aboriginal communities in Canada.

Objective 3: Identify The Legal Status And Significance Of The Federal Government's Sustainable Development Obligations

Objective

To identify and ensure a common understanding of the legal status and significance of the federal government's sustainable development obligations arising from both domestic and international sources.

Rationale

The federal government's legal obligations related to sustainable development derive from various sources, including: (i) international law, (ii) domestic legislation, and (iii) domestic policy statements and documents. Sometimes the sources are hybrid combinations. For example, the **'polluter pays' principle**, an early forerunner of the present-day raft of 'environmentally sound and sustainable development' principles, was developed in part through early English common law (*Rylands v. Fletcher*), decisions of an international tribunal (eg. *Trail Smelter Arbitration*, *United States v. Canada*, (1931-41),

3 R.I.A.A. 1905), a 1972 OECD policy directive, and the 1992 Rio Declaration principle 16, as well as being recognized in domestic law concerning liability for environmental damages.

- **International law** -- represents an important and growing source of the Federal Government's sustainable development obligations. Canada is a party to numerous bilateral, regional and international agreements that contain commitments to promote sustainable development or to act in accordance with various of the principles that are related to sustainable development. Such provisions are becoming an increasingly common feature of international agreements. (**Annex C** describes **international sources** and trends in sustainable development law.)

The number and complexity of these international agreements is increasing. (Refer to Chart of Agreements 1972 - 1992, **Annex C**, p. 57). A high level of domestic legislative and regulatory action is required to implement such agreements. Accordingly, the need for legal advice on negotiation, interpretation and implementation of international agreements is increasing.

International Law and Sustainable Development

Various international legal principles related to sustainable development are emerging. While not all of the content and significance of these principles have been agreed upon, some have emerged from United Nations summit conference declarations (eg. the 1992 Rio 'Earth Summit' on Environment and Development (UNCED), the 1994 Cairo Population Conference, the 1995 Beijing Conference on Women, and the 1995 'Social Development' summit conference in Copenhagen. International conventions and aid agreements as well as case law and scholarly writing have identified duties on countries to cooperate, build institutional capacity, fund development aid, respect rights, exchange information, and transfer technology, among others. In the field of the environment, in particular, international obligations have emerged to:

- * avoid environmental harm to other nations;
- * compensate for transborder environmental damages;
- * conduct environmental impact assessments prior to initiating programs and projects; and
- * use the "**precautionary principle**" - one definition of which states that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"

(Article 15, Rio Declaration on Environment and Development).

This principle, now recognized internationally, actually had its origin as the German *Vorsorgeprinzip* in domestic policy and then law.

- **Domestic Legislation** -- there is a discernible trend towards incorporating references to sustainable development or its constituent principles into domestic legislation. For example, the *Department of Natural Resources Act* and the *Department of Industry Act* both explicitly require those departments to promote sustainable development. Similarly, it is one of the four overarching purposes of the *Canadian Environmental Assessment Act*.

Statutory Promotion of SD

Canadian Environmental Assessment Act, section 4(b): [purpose] is to "encourage responsible authorities to take actions that **promote sustainable development** and thereby achieve or maintain a healthy environment and a healthy economy"

- **Domestic Policy** -- endorsements of, or commitments to, sustainable development or its constituent principles by the federal government, (for example, in ministerial statements, departmental Business Plans and Sustainable Development Strategies) have both political and legal significance concerning the types of considerations for which the government should account in making decisions.

Policy Sources of Sustainable Development Legal Obligations

A recent Australian case highlights the possible influence of government policy on legal obligations related to sustainable development. In *Leatch v. National Parks and Wildlife Service* (1993) 81 LGERA 270, the plaintiff argued that the issuance of a licence to build a road in an ecologically sensitive area contravened the precautionary principle. The New South Wales Land and Environment Court ruled that, although the legislation governing the activity complained of did not explicitly refer to the precautionary principle, the government was bound to respect the precautionary principle. The court ruled that the precautionary principle had become a part of Australian law through its inclusion in various international agreements to which Australia was a party, and through its inclusion in domestic policy documents.

Sometimes the source and nature of an obligation are not easy to categorize. Prior to the 1989 decision of Mr. Justice Cullen in *Canadian Wildlife Federation Inc. v. Canada (Min. of the Environment)* (1989) 3 F.C. 309, affirmed (1990) 2 W.W.R. 69, the "Oldman Dam" case, compliance of the federal government with the environmental impact assessment process established by the Environmental Assessment Review Process (EARP) Guidelines Order was generally considered to be a matter of policy and not of law. But in that and subsequent decisions, the Federal Court made it clear that the EARP Guidelines Order was a law of general

application which was binding upon all those to whom it applied. Subsequently, an updated process was enshrined in a new statute, the *Canadian Environmental Assessment Act, 1994*.

Although there may be a good understanding of some of these obligations, there is not a widespread, common understanding of the Federal Government's overall obligations related to sustainable development from all of these sources acting together. The scope and significance of these obligations should be researched and communicated to other government departments, both to provide an accurate assessment of current obligations, and to inform future government action with respect to entering into these types of obligations and instruments.

Actions

- 3.1 The Department will undertake one or more studies to address this issue.
- 3.2 The Department will ensure that its information on sustainable development is updated on a regular basis.
- 3.3 Justice counsel and legislative drafters will continue to reflect sustainable development obligations in the legal opinions

and drafting advice they provide on an ongoing basis to the government.

3.4 The Department will continue to cooperate with the Office of the Commissioner of the Environment and Sustainable Development in its study on Canada's international sustainable development commitments.

3.5 The Department will, when appropriate, add a module on sustainable development and law to its Legal Awareness Program.

The Legal Awareness Program

For the last several years, Justice has been delivering courses to increase the legal awareness of managers in client departments and agencies across the federal government. These courses are provided in accordance with client needs and priorities identified in the context of service agreements between the Department and its clients. The Program currently includes such topics as public law, human rights, contracting and property administration, and could be expanded as required to cover sustainable development issues as they relate to the law.

Objective 4: Support Law Reform To Promote Sustainable Development

Objective

The Department will support law reform in order to improve the overall effectiveness with which the federal government implements its sustainable development obligations.

Rationale

As stated in section 1.3 of this Strategy, law reform can be an important method of promoting sustainable development. Through government, academic and international efforts and experience in Canada and other jurisdictions, the legal community at large is learning that there are ways to ensure that new legislation and regulation more effectively promote sustainable development. Where laws seek to regulate behaviour, for example, there is increasing awareness about opportunities to achieve the objective through innovative cost-effective mechanisms, such as economic incentives and self-management regimes. Where laws stipulate criteria for decision-makers, they can require consideration of sustainable development principles such as the

precautionary principle. Laws can also ensure that a wide range of social perspectives are considered by mandating access to information and decision-making.

Law reform may also be appropriate to remove existing legislative barriers to sustainable development, which various studies have found in some government objectives, licensing criteria, and tax and regulatory incentives. The *Final Report* of the Federal Task Force on Economic Instruments and Disincentives to Sound Environmental Practice, for example, stated that “it is recognized that certain existing government policies and programs may inadvertently act as barriers or disincentives to sound environmental practices” (1995, p. 4).

Although the decisions to promote sustainable development through law reform will be made primarily by client departments and agencies, such initiatives often will require input and advice from Justice Canada.

Actions

4.1 Through the actions taken under Objectives #1 to #3, the Department will enhance its capacity to help client departments and agencies that wish to review their legislation and regulations to identify potential law reforms

aimed at removing existing barriers to sustainable development.

4.2 As part of its work to improve access to the justice system, and as part of the Department’s Program Review Phase II initiative to review statutes for inefficient, costly, ‘red tape’ procedures, the Department will seek to identify and correct barriers to access to administrative and judicial proceedings, particularly those concerning the environment. The Department will also assist when client departments conduct reviews of laws which they administer.

4.3 The Department will continue to promote the use of alternatives to, and new forms of, legislation and regulation. In particular, it will continue to discuss with client departments the appropriate mix of regulation, economic instruments, educational tools, moral suasion and voluntary measures needed to promote sustainable development effectively and efficiently.

Objective 5: Ensure Consistent And High Quality Legal Advice Related to Sustainable Development

Objective

The Department will enhance its institutional structures as necessary in order to deliver high quality and consistent legal advice under Objectives #1 to #4.

Rationale

During consultations, numerous functions were identified as essential to implementing Justice's contribution to the federal government's sustainable development initiative: gathering and disseminating information; initiating, conducting, and managing research; monitoring and coordinating activities within required timeframes; liaising with client departments and the Office of the Auditor General and its Commissioner on Environment and Sustainable Development. To carry out these functions, the Department needs institutional mechanisms responsible for promoting sustainable development and for assisting in the implementation of the actions itemized above. These mechanisms are important for a number of reasons:

- the legal implications of sustainable development are not yet well understood;
- the integration of sustainable development considerations into ongoing Departmental activities and decisions will require a catalyst and focal point;
- sustainable development is a cross-cutting issue, raising the need for consistency in the advice provided to different clients, and the need to ensure that all relevant parts of the department can learn from and share experiences in addressing similar issues; and
- the Department has enjoyed considerable success with similar approaches to the promotion and institutionalization of analogous cross-cutting issues, such as gender equality.

Actions

- 5.1** The Department will establish a sustainable development network, with one or more individuals designated to coordinate the network. This network will serve as a forum to support Justice staff working on sustainable development issues throughout government by facilitating the exchange of ideas, experiences and opinions. An SD network coordinator will be able to fulfil SDS implementation functions related

to information, education, research, monitoring, coordination, and liaison. The SD network, modelled on existing networks such as the Gender Equality Initiative (outlined below) and on similar SD networks being developed in other federal departments, will serve to reduce the duplication of research, and facilitate collaboration on domestic and international legal issues related to sustainable development.

5.2 Each operational area of the Department will also identify a contact person for the network in order to receive information on sustainable development issues, to pass on questions raised within the area, and to act as an internal resource for the area on these matters.

5.3 The Department, through its SD network, legal services units, and other relevant services, in consultation with officials in client departments and agencies, will develop a guide or checklist to identify sustainable

The Gender Equality Initiative: contributing to the social dimension of SD

Under the Gender Equality Initiative, the Department of Justice is committed to: a) ensure that the needs of women are taken into account in all of the Department's substantive work and management practices and policies; and b) embed awareness, responsibility and accountability for gender equality throughout the Department.

In order to fulfil these responsibilities, the Department has established a structure that promotes gender considerations in the legal work and management decisions of the Department. The initiative is supported by three structures:

- The **Office** of the Senior Advisor on Gender Equality (SAGE) reports to the Deputy Minister, and is responsible for departmental professional development activities, internal and external consultations, research on gender issues, and coordination.
- The **Working Group** on Gender Equality includes 'specialists' from across the Department, the Senior Advisor, and representatives of senior management. It ensures the coherent implementation of a gender equality analysis in the substantive work of the Department, as well as input, feedback and monitoring within each sector.
- The **Advisory Committee** on Gender Equality comprises approximately 20 employees from all levels of the Department.

The Gender Equality network is one means whereby the social impact of policy, laws and regulations can be analyzed, thereby contributing to the sustainable development goals of equity, equality, and fair distribution of costs and benefits between women and men as well as between other groups in society.

development principles and objectives which should be considered when giving legal advice and drafting new legislation or regulations. The checklist will be available to Justice lawyers and to client department officials responsible for formulating drafting instructions.

5.4 The Department, through its SD network, legal services units and Property Law Unit, will ensure that advice and standard form contracts for matters such as procurement and contribution agreements, and property transactions, respectively, reflect sustainable development and environmental due diligence considerations. For a current example, standard form contracts for property transactions reflect Treasury Board guidelines on contaminated sites.

5.5 The Department's International Law Coordination Committee will encourage and support an integrated approach to legal advice in the areas of international environmental, trade, human rights, development and criminal law. The Committee will have as a standing item on its agenda "Cross-Cutting Sustainable Development Issues."

5.6 The Department, primarily through its International Law and Activities Section and its Francophonie program, will provide legal technical assistance on issues related to sustainable development in the context of the Department's expanded role in assisting developing countries and emerging democracies to build their legal institutions to support democracy, human rights and the rule of law, as well as other issues important to them.

5.7 Within the context of client service agreements, legal services units and Justice regional offices will review existing and potential prosecution guides to ensure effective prosecution of offences under statutes concerning, for example, fisheries, natural resources and the environment, with a particular emphasis on those laws implementing international obligations.

5.8 The Policy Sector will promote awareness of sustainable development in its work by incorporating sustainable development as a dimension to be accounted for in its planning instruments. For example, the Sector will add sustainable development as a factor to be checked in the "Policy Project Plan."

5.9 Counsel responsible for litigation will continue to promote the more efficient operation of the legal system by devising more efficient litigation processes, using information technology to compile and simplify procedures and to do research, and, where appropriate, by promoting dispute resolution as an alternative to litigation.

Justice Canada's Dispute Resolution Policy

In 1996, the Department promulgated a "Dispute Resolution Policy." The Policy's goal is to make Justice Canada a leader in promoting the use of dispute resolution (DR) as a means for improving access to and satisfaction with the justice system. The Policy makes a variety of commitments, including the provision of training in mediation, negotiation and arbitration, improved client services, including DR clauses in government contracts, and incorporating DR processes into legislation.

Implementing the new policy has benefitted from strong leadership from the Deputy Minister, input from an Advisory Committee representing all relevant sectors, and work by a network of DR contacts or focal points. Such commitment of resources has enabled the DR Secretariat to provide training and reference materials within Justice as well as to serve client departments with a roster of qualified DR practitioners and seminars on lessons learned and case studies.

5.10 The Department, through its sustainable development network coordinator, will coordinate with the responsible officials of other departments on the implementation of common and similar SDS activities which require interdepartmental cooperation. To facilitate such ongoing collaboration, the Department recommends continuation of the Interdepartmental SDS Network which was established for information exchange and assistance during the SDS preparation phase of 1996-1997.

5.11 The Communications Unit will include items related to sustainable development and, in particular, to the implementation of this SDS, in briefings to departmental management, and in information materials addressed to Justice employees.

5.12 The Human Resources Directorate, as well as facilitating and encouraging staff to telework when appropriate to support action 6.2 below, will include reference to implementation of the Department's SDS at relevant points in those training and education activities which it helps prepare and conduct.

Objective 6: Improve The Department's Physical Stewardship

Building upon the federal government's *Greening of Government Operations Policy (1995)*, the Department's efforts to reduce the environmental impact of its direct physical operations will focus primarily on three sub-objectives.

Sub-Objectives:

6.1 Reduce pollution and waste by:

- reducing gaseous emissions (greenhouse gases, acid forming gases, particulates, toxic substances);
- reducing liquid effluents (untreated process effluents, untreated sewage, contaminated surface runoff); and
- reducing solid waste output.

6.2 Reduce resource consumption by:

- reducing use of consumable items (paper and office supplies); and
- reducing energy use.

6.3 Incorporate Sub-Objectives 6.1 and 6.2 into the Department's existing environmental management system.

Sub-Objective 6.1 Reduce Pollution and Waste

Reduce Gaseous Emissions

Table 1: Gaseous Emissions Reduction Targets			
Description	Quantity	Base Year	Timing
Reduce carbon dioxide emissions	10%	1997	end 1999
Reduce emissions of Volatile Organic Compounds (VOCs) and other pollutants	10%	1997	end 1999
Minimize emission of VOCs and other pollutants in special projects	as the need arises	TBA	TBA

Reduce carbon dioxide emissions

The Department's forthcoming consolidation of many of its Ottawa operations in one main location will help reduce its carbon dioxide emissions.

These targets will be achieved by the following actions:

- 6.1** Make more use of electronic communications.
- 6.2** Support telework.
- 6.3** Combine the delivery of envelopes to the same location.
- 6.4** Encourage increased use of public transit.
- 6.5** Where feasible, increase the number of Justice-owned alternative fuel vehicles by purchasing electric- propane- or natural gas-powered cars whenever new or used vehicles are needed.
- 6.6** Decrease the time that vehicles spend idling by banning idling at loading docks.
- 6.7** Where feasible, change sources of heating and cooling, including using passive solar heating.
- 6.8** Where feasible, change sources of electricity, including photovoltaic power generation.
- 6.9** Where feasible, specify environmentally friendly "green" products and processes for cleaning, painting, maintenance, construction and furnishings.
- 6.10** Encourage the use of bicycle couriers.

Reduce emissions of VOCs (Volatile Organic Compounds) and other pollutants in on-going operations

These targets will be achieved by the following actions:

- 6.11** Improving printing and copying, practices, particularly for mass mailings.
- 6.12** Improving central heating, ventilation, and cooling systems (HVAC Heating, Ventilation and Air Conditioning) which emit mainly carbon dioxide, but possibly also acid gases and particulates.
- 6.13** Reducing the use of paints and cleaning products which emit VOCs.

Minimize emissions of VOCs (Volatile Organic Compounds) and other pollutants in special projects

These targets will be achieved by the following actions:

- 6.14** Collaborating with Public Works and Government Services Canada

(PWGSC) to ensure that construction, retrofits and repairs materials and work processes conform to the strictest environmentally responsive construction and renovation guidelines.

- 6.15** Ensuring that construction and renovation contracts include environmental clauses to deal with construction materials, construction equipment and the disposal of materials.

Reduce Liquid Effluents

Table 2: Liquid Effluent Reduction Targets			
Description	Quantity	Base Year	Timing
Reduce effluent output	30%	1997	end 1999
Send liquid effluent from copiers for proper disposal	100% of waste		end 1998

Decrease Effluent

These targets will be achieved by the following actions:

- 6.16** Install low-flow faucets to minimize water discharge to sewer systems.
- 6.17** Segregate grey water from HVAC systems for storm sewer disposal or irrigation.
- 6.18** Where appropriate, hook-up roof drains to storm sewers rather than sanitary sewers.
- 6.19** Specify environmentally friendly “green” faucets for new construction and renovations that are being supplied on contract.

Send Liquid Effluent From Copiers For Proper Disposal

- 6.20** In addition to improving disposal practices, the Department will endeavour to replace liquid-based copiers with dry powder-based copiers wherever financially feasible.

Reduce Solid Waste**Table 3: Solid Waste Output Reduction Targets**

Description	Quantity	Base Year	Timing
Reduce packaging and paper waste	50%	1990	end 1999
Reduce other wastes	50%	1995	end 1998
Recycle toner cartridges	100% of used cartridges		end 1997
Recycle batteries and fluorescent light tubes	100% of batteries and fluorescent light tubes		end 1998

Reduce packaging and paper waste

6.21 Reduce packaging materials by specifying appropriate packages for the supplies ordered and by appropriately packaging materials sent out.

Reduce other wastes

6.22 Ensuring proper collection and disposal to approved composting/recycling facilities of lunch waste, construction and demolition waste; and plastics, including video and audio cassettes, diskettes and compact discs.

Recycle toner cartridges

6.23 The Department will send all toner cartridges to reputable firms for re-use/recycling of parts and will purchase recycled cartridges where available.

Recycle batteries and fluorescent light tubes

6.24 The Department will collaborate with PWASC to have batteries and fluorescent light tubes collected and sent to approved recycling facilities.

Sub-Objective 6.2

Reduce Resource Consumption

Reduce Use of Consumable Items

Table 4: Consumable Items Reduction Targets			
Description	Quantity	Base Year	Timing
Reduce paper product use	25%	1997	end 1999
Reduce energy use	10%	1997	end 1999

Reduce Paper Product Use

These targets will be achieved by the following actions:

- 6.25 Reuse packaging as much as possible (particularly shipping bags, packing materials, and boxes).
- 6.26 Inform employees of the procedures to have their name removed from distributions of unsolicited mail.
- 6.27 Printing by limited run and print-on-demand (to reduce the production of unneeded materials).
- 6.28 Increasing the use of diskettes and CDs to store and distribute information.
- 6.29 Reusing used-one-side paper for memos, draft reports, and working papers.
- 6.30 Re-using file folders.
- 6.31 Sharing newspapers.
- 6.32 Using e-mail to circulate memos and as an alternative to faxes.
- 6.33 Responding to correspondence via electronic means such as e-mail, the Internet (the Minister's Office, alone, receives 200,000 to 300,000 pieces of mail per year).
- 6.34 Encouraging double-sided printing of documents, including internal memos.
- 6.35 Using electronic forms (which may require acceptance of electronic signatures and other security measures).
- 6.36 Increasing the use of Canada Post's standard envelope size (which may require allowing for folding of documents).
- 6.37 Increasing the use of electronic reference documents, reports, and news.
- 6.38 Encouraging use of the Internet for research and communication.
- 6.39 Training staff to use electronic resources.

Reduce Energy Use

The Department will reduce building energy use by 10% relative to 1997 levels by the end of 1999 by:

- 6.40** Specifying automatically controlled lighting in new construction and renovations.
- 6.41** Specification and use of low-energy-demand light bulbs and capacitors in new construction and renovations.
- 6.42** Specifying low-energy-demand office equipment (e.g., Energy Star certified computers), particularly ones that can “sleep” when not in use.
- 6.43** Night-time and weekend setback of building temperature settings.
- 6.44** Working closely with PWGSC to encourage installation of innovative energy controls, including cost-sharing and flow-through of savings.

Sub-Objective 6.3

Implement An Environmental Management System

- 6.45** In order to attain its operational objectives in the most cost-effective manner possible, the Department will ensure that its existing environmental management system (EMS) contains:
 - a green procurement policy for goods and services;
 - a strategy to train personnel to recognise and discharge their environmental responsibilities;
 - performance baselines;
 - environmental performance monitoring and auditing processes; and
 - an incentive program for good environmental performance.

3.0

Performance Measures

Most of the performance measures described in this section reflect the Department's focus on enhanced capacity. With the exception of the initiatives related to improving its physical operations, most of the Department's activities will not have a direct environmental impact. Rather, they will be directed at supporting improved decision-making throughout government. Moreover, as a service organization, the substantive content of most of the Department's legal work is dictated by its clients. The extent to which Justice Canada contributes to sustainable development over time will depend in large part on the degree to which its clients request advice on law reform and other measures to promote sustainable development through the law. Lessons from other jurisdictions and from the Department's own business planning experiences suggest that qualitative, intermediate measures are the only feasible measures in most of these cases.

Tables 5 and 6 present performance measures for Objectives 1 to 5 and Objective 6, respectively. In the **policy and programs** area, objectives and actions do not lend themselves to predicting firm completion dates at this early stage; however, progress will be reported annually as required by the Auditor General, and the activities will

be undertaken within the three years of this first review period. For **physical operations**, targets and timing are set out above with the activities described under Objective 6. The Department of Justice is committed to a step-by-step approach, with continuous improvement, within available resources.

Table 5: Performance Measures For Objectives 1 - 5

Objectives and Actions	Performance Measures
Objective 1: Enhance Capacity	
Ongoing information and education	<ul style="list-style-type: none"> • Development of training and information products
SD module in Continuing Legal Education Program	<ul style="list-style-type: none"> • Delivery of module • Delivery of training
Training on domestic implementation of international obligations	<ul style="list-style-type: none"> • Development of course syllabus • Delivery of course
Review clients' business plans and SDSs to anticipate legal demands	<ul style="list-style-type: none"> • Increased awareness and knowledge within the DLSUs
Objective 2: Identify Links Between SD and the Department's Services	
Co-sponsor CBA research on linkages between law and SD	<ul style="list-style-type: none"> • Production of a CBA/Justice Canada publication on the linkages between law and sustainable development
Explore opportunities for collaborative research on SD and law with Law Commission	<ul style="list-style-type: none"> • Completion of research
Contribute to research for interdepartmental Research Committee	<ul style="list-style-type: none"> • Completion of research, as requested
Identify key relationships between SD and mandate of Justice Canada	<ul style="list-style-type: none"> • Studies on the linkages between sustainable development and the Department's services
Objective 3: Identify and Advise on Federal Government's Legal Obligations Related to SD	
Research SD commitments of client departments and of federal government.	<ul style="list-style-type: none"> • Completion of relevant research
Ensure legal advice reflects government's SD obligations	<ul style="list-style-type: none"> • Dissemination of the studies within the Department • Reliance on the studies by legal counsel
Add 'SD and law' module to Legal Awareness Program	<ul style="list-style-type: none"> • Creation of course materials and delivery of training • Increased awareness and knowledge of clients' SD needs
Cooperate with OAG study on international SD obligations	<ul style="list-style-type: none"> • Meeting with OAG; transfer of information
Ensure legal drafting is consistent with government's SD obligations	<ul style="list-style-type: none"> • Future legislation reflects the obligations

Objective 4: Support Law Reform to Promote SD

Review laws to identify barriers to access to the justice system	<ul style="list-style-type: none"> • Completion of review • Initiation of reforms
Promote use of alternatives to command and control	<ul style="list-style-type: none"> • Increased use of alternative forms of regulation.

Objective 5: Ensure Consistent and High Quality Advice Related to SD

Departmental SD network	<ul style="list-style-type: none"> • Establishment of network with designation of coordinator and contact persons • Use of the network by Departmental lawyers
Designate contact persons on SD issues in DLSUs, and operational areas	<ul style="list-style-type: none"> • Designation of SD responsibilities within all areas of the Department
Develop guidelines for incorporating SD considerations into legal advice and drafting of statutes and regulations	<ul style="list-style-type: none"> • Development of checklist • Use of checklist by legal counsel • Future laws and regulations reflect the checklist
Ensure that advice and standard forms for procurement, contributions and property and related transactions reflect SD considerations (e.g. T.Bd. guidelines on contaminated sites)	<ul style="list-style-type: none"> • Completion and distribution and use of revised forms • Reduced environmental liability for property transactions
Add SD to agenda of International Law Coordination Committee	<ul style="list-style-type: none"> • Improved integration of environmental and social considerations into ongoing international law and policy decision-making within the federal government
Deliver legal technical advice to developing countries on the rule of law and human rights	<ul style="list-style-type: none"> • Delivery of advice
Determine need for prosecution guides for environmental and resource laws	<ul style="list-style-type: none"> • Completion of review • Completion of guides, as required by review
Incorporate SD into Policy Project Plan checklists	<ul style="list-style-type: none"> • Enhanced consideration of SD consideration in Policy Sector planning.s
Promote more efficient litigation and dispute resolution	<ul style="list-style-type: none"> • Increased use of information technology for court procedures • Increased use of dispute resolution
Work with other departments on cross-cutting SD issues	<ul style="list-style-type: none"> • Participation in continued interdepartmental SDS network
Include SD in communications briefings to management and staff	<ul style="list-style-type: none"> • Inclusion of SD in briefing materials • Enhanced awareness
Include reference to implementation of SDS in human resources training	<ul style="list-style-type: none"> • Inclusion in training materials • Increased awareness

**Table 6: Performance Measures for Objective 6
Improved Stewardship and Procurement**

Objectives and Actions	Targets	Performance Measures
Sub-Objective 6.1: Reduce Pollution and Waste		
<i>Reduce Gaseous Emissions</i>	Reduce carbon dioxide emissions	Trend in carbon dioxide emissions; increased use of actions, such as telework
	Reduce emissions of volatile organic compounds (VOCs) and other pollutants from on-going operations	Trends in emissions of VOCs, ozone, particulates
	Minimise emissions of volatile organic compounds and other pollutants from special projects	Emissions from each project
<i>Reduce Liquid Effluents</i>	Reduced effluent	Trend in effluent output
	Proper disposal of liquid effluent from copiers	Record of disposal
<i>Reduce solid waste output</i>	Reduce packaging waste output	Trend in packaging material purchases and waste disposal
	Reduce other waste output	Trends in waste disposal
	Recycle toner cartridges	Record of purchase and disposal
	Recycle batteries and fluorescent light tubes	Records
Sub-Objective 6.2: Reduce Resource Consumption		
<i>Use fewer consumable items</i>	Reduced paper use	Trend in paper purchasing
	Toner cartridges purchased for printers and fax machines are recycled cartridges	Record of purchasing and disposal
<i>Reduce energy use</i>	Power consumption in buildings is reduced	Trend in power consumption
Sub-Objective 6.3: Apply Existing Departmental EMS to Sub-Objectives 6.1 and 6.2		Implementation of modified EMS

Annex A: Departmental Profile

The Department of Justice is responsible for the legal affairs of the Government of Canada as a whole and for providing legal services to individual departments and agencies under the authority of the Attorney General and the Minister of Justice, whose duties, under the Department of Justice Act, are distinct but are traditionally carried out by the same person.

As the legal advisor to the government, the Minister of Justice is concerned with matters of policy underlying the law and must ensure that all laws are fair and comply with constitutional and other over-riding legal principles and requirements. The Attorney General is the chief law officer of the government and protects the interests of the Crown within the framework of existing legislation, by providing legal services, and conducting litigation for federal departments and agencies, including prosecution of all contraventions of federal legislation in Canada, other than Criminal Code offences in provinces.

The duties and responsibilities of the Department are set out in the *Department of Justice Act*. The range of its services include legal advice, preparing legal documents, litigation

and drafting bills and regulations. The Department ensures that the conduct of public affairs is carried out in accordance with the law. It also has the lead responsibility in the planning, development and implementation of government policies in areas related to the administration of justice.

In addition to the *Department of Justice Act*, the main legislation governing the work of the Department includes the *Canadian Bill of Rights*, the *Statutory Instruments Act* and the *Statute Revision Act*. These require the Department to ascertain whether the provisions of all bills are consistent with the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms* and with the criteria set out in the *Statutory Instruments Act*, and to periodically revise and consolidate the Statutes of Canada and the regulations thereunder.

The mission of the Department of Justice Canada is to:

- support the Minister of Justice in working to ensure that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice;
- provide high-quality legal services and counsel to the government and to client departments and agencies; and
- promote respect for rights and freedoms, the law and the Constitution.

The Department's mission is achieved through three main activities:

1. *Client Services*

Through this activity, the Department of Justice Canada responds to the requirements of the Government of Canada, its departments and agencies, for quality legal and legislative services.

The overriding goal is to create a fair, effective, affordable and well-functioning justice system that responds to public concerns about safety and security, meets the needs of a modern pluralistic society and reflects the values of Canadians (*Business Plan for 1997-1998*).

2. *Law and Policy*

The law and policy activity ensures a responsive, fair, efficient and accessible national system of justice and examines all laws and regulations to ensure consistency with, among other requirements the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms*.

3. *Administration and Operations*

Corporate management and administrative services for personnel, information and materiel support the Department's program delivery.

The Department's service to the federal government involves several roles: as manager of the law; as provider of policy; and as a central agency. The Department of Justice Canada administers the above three main activities or business lines through three sectors and three branches: the Legal Operations

Sector, the Policy Sector, the Civil Law and Corporate Management Sector, the Legislative Services Branch, the Information Management Branch and the Communications and Executive Services Branch. The sectors expected to play the largest role in the program and policy side of sustainable development are profiled in further detail below:

The Legal Operations Sector is the largest in terms of breadth of subject matter and size of personnel and operations. It comprises, inter alia, all legal services to other government departments organized in three portfolios: (i) the *business* group (serving for example, CIDA, Industry, National Defence, Natural Resources, and Transport Canada), (ii) the *regulatory* group (serving for example Agriculture, Atomic Energy Control Board, Environment, Fisheries & Oceans, Health, Human Resources and the RCMP), and (iii) the *central agency* group (serving for example Finance, Treasury Board, and the Public Service Commission). These legal services are normally provided by Departmental Legal Services Units (DLSUs) collocated in their respective client departments, while the Specialized Legal Advisory Services at Justice headquarters provide advice on administrative law, constitutional and international law, as well as human rights, information and privacy law. The Legal Operations Sector also includes civil and tax litigation,

criminal law, citizenship and immigration law and aboriginal affairs. As well, all *regional offices* of Justice across Canada (except in Québec) are managed by and supported within Legal Operations.

The Policy Sector addresses justice policy issues mainly in three broad areas:

- (a) criminal law policy, including crime prevention and sentence reform,
- (b) integrating justice and social policies to promote the well-being of families, children and youth, and
- (c) public law policy, concerning human rights, information law, aspects of international law and judicial affairs. Programs in support of specific justice policies cover firearms, child support, legal aid, young offenders, public legal education and other areas through cost-shared programs, grants and contributions. Policy integration, coordination and research also furthers justice policy on diversity, equality and access to justice, among other issues.

The **Civil Law** part of the Civil Law and Corporate Management Sector reflects the fact that Canada is bijural, as well as bilingual, with side-by-side systems of common law and civil law. For international development, this better qualifies Canada to provide legal technical assistance to developing countries in the civil law francophone world as well as in common law Commonwealth and

other countries. The Civil Code section has an important function to review federal laws and propose amendments required to harmonize them with the Québec civil law. The Civil Law Sector also comprises the Civil Litigation and Real Property Law (Québec) section and the Québec Regional Office of Justice Canada, which serves federal government departments in Québec. Legal services provided include files on aboriginal affairs, maritime and trade law, and tax litigation in Québec.

Headed by the same Associate Deputy Minister as Civil Law, the **Corporate Management Sector** supports the administration and operation of the Department. It includes divisions for planning and management of resources, finances, contracts and material, and facilities, the Human Resources Directorate, and various other offices, sections and services which help Justice employees deliver the Department's programs. The staff of the Department of Justice are housed at headquarters in Ottawa, in 35 departmental legal services units collocated with client organizations, and thirteen offices located across Canada.

The Department employs approximately 2,500 people, about 1,300 of whom are lawyers, from all over Canada, and is the largest single legal organization in the country. Approximately 500 staff provide legal

support in such occupations as legal secretaries and para-legals. Other important staff include: administrators, researchers, social scientists, economists, computer specialists, personnel and finance officers, and communicators.

The Department promotes employment equity and actively seeks qualified candidates from among aboriginal people, women, visible minorities and persons with disabilities. The Deputy Minister has enunciated the Department's key values as: respect, integrity, and honesty; service to clients; fairness; and a collaborative, participatory and collegial working style.

Future Directions

The Department of Justice Canada had identified a number of key factors which will affect the Department now and in the immediate future. Due to recent government restructuring, the Department is facing new challenges that relate to budgeting and adapting to new service agencies, such as the food inspection agency. There will be a need to work more in partnership with other levels and branches of government.

The Department is also renewing and revitalizing the Justice workforce to meet the changing needs of tomorrow, assisted by new human resource policies.

Rapid demographic, social, economic and technological change, as well as globalization, are all putting pressures on the justice system. In looking to the future, the Department of Justice Canada is working to improve the effectiveness and efficiency of its actions and to ensure that the system's key resources are used in areas where their impact will be the greatest. A strategic planning process is developing common departmental policy directions and identifying priorities for action.

Current Activities Related to Sustainable Development

The Department of Justice is involved in a number of activities which relate to sustainable development. Much of the Department's work, for example, focuses on improving social conditions. Many laws aim to protect rights, assign responsibilities, and create social conditions that foster the well-being of Canadians. Some of the current initiatives of the Department include support for Canadian unity by participating in federal-provincial relations, operationalizing policies for community safety, child support and firearms control; crime prevention through social equity and security.

The Department has set up institutional mechanisms to handle such cross-cutting issues as environmental law, employment equity, and gender equality.

Specifically serving the environmental dimension of sustainable development, the Department of Justice is involved in the design and enforcement of laws and regulations that provide a healthy environment. Its recent contributions include amending the *Canadian Environmental Protection Act*, drafting additional regulations under the *Canadian Environmental Assessment Act*, a bill on the *Endangered Species Protection Act*, and updating the *Fisheries Act*.

Like other federal departments, Justice Canada also has emphasized its stewardship responsibilities in recent years. Much of this work has been focused on the development of a departmental Environmental

Management System. In addition, Legislative Services has made significant progress towards reducing the paper associated with new and revised laws and regulations, both by adopting a policy of printing bills using both sides of pages, and by placing the revised Statutes of Canada on CD ROM and on the Internet.

In *Directions 97-98*, the Department explicitly states that sustainable development is one of the key factors for the future and that respect for the natural environment will continue to shape internal administrative policies. Similarly, the Department's *Business Plan 1997 - 2000* cites sustainable development as one of the challenges facing the department.

Annex B: Consultations and Issue Scan

The process: internal and external consultations

For the Department of Justice, as for other central agencies whose legislative mandate does not directly include an environmental subject matter, the SDS exercise needed first to *raise awareness* among employees about sustainable development before it could elicit input and receive endorsement of an SD Strategy text.

Accordingly, to inform and invite input from the broadest possible range of Justice employees, the following information documents were e-mailed to every Justice employee:

- 1) a message from the Deputy Minister of Justice (No. 232 97-06-13) which clearly demonstrated *senior management commitment* to prepare an SDS for Justice;
- 2) a note from the Chair of the department's SDS Working Group which defined sustainable development and gave examples of actions (Info Justice No. 388 97-06-18); and
- 3) an overview document by the departmental SDS Co-ordinator (Info Justice No. 390 97-06-20) which served: (a) to inform employees about sustainable

development and what the Department of Justice needed to do about it; and (b) to invite and enable employees to indicate how they could contribute through their work.

Internal consultations were conducted on two separate tracks: (1) within the Corporate Management Sector, managers of materiel, information and staffing focused upon technical aspects of 'greening' operations and procurement; and (2) the more conceptually challenging task of linking sustainable development principles to the wide range of the Department's policies and programs and the legal and administrative work of employees was the subject of numerous information presentations, focus groups, and communications from the SDS Co-ordinator and SDS Working Group members.

To inform and receive endorsement from *senior management*, presentations and updates were made to the departmental Operations Committee (April, July 16, October 22, 1997), Policy Sector (June 10, Sept. 30, 1997, October 31, 1997), and to interested sectoral managers. Senior management discussed the possibility of linking the SDS and the departmental Business Plan in the future.

The Deputy Minister asked each Departmental Sector Head to designate representatives of the various services and divisions of their sector and all of the Regional Offices to provide input

on the SD Strategy. From the wide dissemination of the above communications within the Department, numerous designates and volunteers participated in *focus groups* to scan the issues, set objectives, and propose actions. Participants also provided e-mail reactions to the *issue scan* and proposed elements of the SDS in the main 'consultation' document of June 20, 1997 entitled: *Towards a Sustainable Development Strategy for Justice--Consultation Document*. Follow-up documents were distributed at presentations, focus groups, and upon request.

External consultations were commenced after the internal consultations in July and August 1997 yielded emerging roles and actions for the Department of Justice (see the Issues and Actions section, below). At the invitation of the Canadian Bar Association (CBA), a presentation to the National Environmental Law Section of the CBA on August 26, 1997 elicited interest from lawyers in private and public practice. Feedback included a call for practical, tangible actions, including a call for collaboration between the Department and the CBA to develop a publication linking sustainable development principles with law reform proposals.

Legal experts in sustainable development were identified and requested to give their own recommendations on what role the law

generally, and the Department of Justice specifically, could play to advance sustainable development in practice. The SDS coordinator interviewed selected professors of law and other relevant fields at various universities (Dalhousie, Ottawa, Montreal, Victoria, UBC, Alberta and Calgary). He also contacted *non-governmental* organizations with a known interest and expertise in the field, including the West Coast Environmental Law Association (WCELA), the Canadian Environmental Law Association (CELA) and the Environmental Law Centre (Edmonton). Information and some comments were also received from a number of contacts in *international* organizations, such as the International Institute for Sustainable Development (IISD, Winnipeg), the Commission on Environmental Cooperation (NAFTA/CEC, Montreal), the Commission for Environmental Law of the International Union for the Conservation of Nature (IUCN/CEL, Switzerland), the World Bank and Global Environment Facility (GEF, Washington, DC, USA), and United Nations Environment Program (UNEP).

Much of the academic literature on sustainable development is in English, but an international colloquium held in Jonquière, Québec, September 10-14, 1997 served conveniently to publicize the federal government's SDS initiative, and to gather information

published in French to better inform and elicit feedback from the francophone members of the Department.

Further external presentations were made during the annual meeting of *federal and provincial government lawyers* working in environmental law, held in Edmonton, Alberta, September 24-25, 1997. Like other professional meetings, this will serve as the first step in an iterative process of consultation and input, with numerous provincial colleagues interested in learning from and eventually following the federal initiative.

Within the federal government, the Department's SDS process benefited from advice from colleagues in *other departments* and from information provided by the Office of the Commissioner of the Environment and Sustainable Development at various venues. A draft with the main elements of Justice's SDS objectives and proposed actions was presented to the *Interdepartmental SDS Network* on September 29, 1997, with an invitation for feedback. Revised drafts were sent to interested SDS coordinators after a second presentation to the SDS Network on November 4, 1997.

External consultations with the Department's clients were facilitated by the fact that Departmental Legal Services Units (DLSUs) are collocated with their client government

departments which they serve. Thus, participants in the Justice SDS exercise could contact client staff to ascertain potential requirements for DLSU assistance on legal issues arising from the clients' SD plans. Networking with other SDS officers revealed potential roles for the Department of Justice, including interdepartmental cooperation on matters of shared interest and mandate: for example with the departments of Environment and Fisheries & Oceans regarding prosecutions for non-compliance with the Fisheries Act.

Input received on Issue Scan during Consultations: major points

While the links between their work and sustainable development were not always immediately evident or easily understood, most Department participants expressed enthusiasm for contributing, to the extent they were able within their work, to address the challenges identified in the Issue Scan part of the consultation document at the SDS presentations. Many of the wide range of comments made will be useful in the implementation stage of this SDS even if they have not been not specifically recorded in the general language of the SDS text. Suggestions included management enabling staff to take time for socially useful volunteer activities, practical tips to improve the work environment, and actual conservation initiatives such as installation of nesting boxes for

endangered species such as peregrine falcons. Among the salient issues and points arising from consultations, both internal and external, were the following:

1. Research and awareness raising are required because the linkages between sustainable development principles, the law generally and the Department of Justice in particular, are not clear, or at least not yet generally well understood.
2. The Department of Justice works in a number of areas relevant to sustainable development. Most of the SD focus, at present, is upon legal services to the 'environment' mandated departments of Environment, Fisheries & Oceans, Agriculture, and international law, and, to a lesser extent, human rights and social policy such as gender equality and crime prevention.
3. Justice has useful experience in addressing and promoting similar cross-cutting themes, such as human rights law and the Charter, gender equality, bilingualism, and environmental issues.
4. At this first three-year stage, the focus is expected to be upon practical, tangible actions, primarily addressing the environmental dimension of SD; the Department of Justice should enhance its capacity to be in a position to take more of a lead role envisaged for the department in addressing the social dimensions of sustainable development.
5. As a central agency, Justice already acts as a mediator to integrate differing points of views and to resolve conflicts arising among departments when activities within their different mandates clash. Justice is in a position to vet proposals and integrate decision-making inputs. The requirement within the Department for one coherent position on disputed or controversial questions of law is a form of integrated decision-making.
6. The proper implementation of the Department's SDS will require various functions, including information dissemination, education and training, co-ordination to assure consistency, monitoring and follow-up, and liaison with other departments on SD.
7. A mechanism to perform, or at least facilitate, these functions may be desirable. Distinct from environmental questions which are normally addressed to Environment Canada's DSLU, a need was raised and endorsed for a Justice Sustainable Development organizational structure or

mechanism, which would integrate SD issues from various sources as has been done for other cross-cutting issues, set up on an intradepartmental basis, like the former Environmental Issues Secretariat and the current Gender Equality office and network.

8. To provide the substantial information and education required, the Continuing Legal Education Division and the Legal Awareness Program could assist in the preparation of guides and checklists.
9. Each Justice legal service area whether at headquarters, located with a client or in a region, should have at least one lawyer as a resource person on sustainable development issues, as in the Gender Equality network.
10. The fact that the preparation of one SDS is a legislative obligation, shared with other federal departments, should ensure the allocation of resources required to implement it.
11. Since the Department of Justice is a service agency, an appropriate Departmental objective would be to provide the required legal support to assist its client departments to achieve their own SDS objectives and targets, through integrated decision-making

processes, policy research, advice on legal issues, legislative review and reform. The Department's SDS should reflect this client service orientation.

Issues scanned; questions posed; emerging roles

Participants were asked to consider the following issues in respect of the core Justice roles which emerged during the consultations on the issue scan and presentation:

1. Enhance capacity:

- a) What are the basic knowledge and skills that we need in order to respond to requests (in house or by other departments) to implement sustainable development principles?
- b) What are the existing means and obstacles to building capacity?
- c) What steps do we need to take to build this capacity? e.g.: SD module in Continuing Legal Education Program and Legal Awareness Program, education and training, policy research to identify key relationships between law and SD.

2. Ensure consistency in giving SD advice and/or integrating SD considerations into decision making.

- a) In what kind of work, specifically, would consistency be most crucial?

-
- b) What mechanisms/practices have promoted consistency in the past with other initiatives? (e.g.: gender equality network, environmental issues secretariat)
 - c) Which of these proven mechanisms/practices could be applied to promote consistency in the integration of sustainable development into departmental practices?
3. **Identify and advise on federal government's legal SD obligations:** Our federal clients may present the first challenge to our capacity to deliver consistent advice on SD-related issues.
- a) What are the key areas where our advice is likely to be sought? (international treaty obligations, other departments' SDSs)
 - b) What areas would we like to pursue, proactively?
 - c) What steps could we take to address these areas?
4. **Undertake SD-related law reform:** What other SD-related issues within our mandate could we pursue within the three-year-time-frame of the first SD strategy?
- a) Given the expected impact of integrating SD considerations into legislation and regulation, in what areas might law reform be needed or requested by client departments?
 - b) What steps could we take to address these areas within the first 3 years?
- 5. **Other:** What other concerns do we need to address when considering the Justice role in implementing SD?
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Annex B-2: Participants and Contacts

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Annex C:

International Sources of Environmental and Sustainable Development Law: 1992 Rio 'Earth Summit', Agenda 21 and Domestic Law Reform

In the field of protection of the environment, international law has increasingly preceded and pulled domestic lawmaking in its wake. The traditionally slow organic translation of local community norms into laws and regulations has in some areas been eclipsed by a national government's obligation to implement an international convention through domestic law. In recent years a growing body of scientific evidence about what needs to be done, public pressure over what should be done and political action as to what can be done, has led to numerous new international laws addressing environmental issues.

Some Ecological Facts

- Although most industrialized countries are phasing out production of CFCs under the Montreal Protocol, ozone depletion will still continue until about the middle of the next century.
- The average Canadian consumes about 18 times the energy and is responsible for the emission of 10 times as much carbon dioxide as the average person living in South or East Asia.
- All of the 17 major fishing areas in the world's oceans are fished at or beyond their capacity; the Labrador cod fishers are not alone.
- Nearly 90 million people are added every year to the world's population which has more than doubled since 1950. The world's people now consume five times the natural resources and energy (measured by gross world product) than were used forty years ago.

International law is exerting a similar influence over sustainable development. The **1992 United Nations Conference on Environment and Development (UNCED or the 'Earth Summit' in Rio)** called for 'the further development of international law in the field of sustainable development' in Principle 27 of its 'Rio Declaration'. In Chapter 39 of 'Agenda 21', UNCED's sectoral programme of action for governments, the signatories stipulated that such law would have to pay 'special attention to the delicate balance between environmental and development concerns.'

Law figures prominently as a tool for achieving sustainable development goals. This is amply reflected in **Agenda 21**, in which signatory governments, including Canada, committed themselves to a programme of action at the 1992 Earth Summit in Rio. In its **Chapter 8** on **'Integration of Environment and Development in Decision-making'**, it calls for an effective legal and regulatory framework. At 8.13, as a basis for action, laws are recognized as "among the most important instruments for transforming environment and development policies into action; not only through 'command and control' methods, but also as a normative framework for economic planning and market instruments." Further at 8.14 of Agenda 21: "To effectively integrate environment and development in the policies and practices of each country, it is essential to develop and implement integrated, enforceable and effective laws and regulations that are based upon sound social, ecological, economic, and scientific principles.

It is equally critical to review and enforce compliance. Recognizing that enacting and enforcing laws at national and local levels is essential for implementing international agreements, Agenda 21 calls upon governments: (a) to make laws and regulations more effective; (b) to establish accessible judicial and administrative procedures for legal

remedies; (c) to provide legal reference and support services; (d) to establish a cooperative training network for sustainable development law, especially to assist developing countries; (e) to develop integrated strategies for compliance, including institutional capacity for collecting data, reviews, detection, enforcement, and evaluation; and (f) national monitoring of legal follow-up to ensure domestic implementation of international treaty obligations. A major part of the United Nations Agenda 21 programme is oriented towards improving the legal-institutional capacities of countries to cope with national problems of governance and effective law-making and applying law in the field of environment and sustainable development.

Agenda 21, in its **Chapter 39** on **International Legal Instruments and Mechanisms**, recognized the need to strengthen the relationship between international agreements in the field of the environment and relevant social and economic agreements, such as on trade. Further, it called for legal technical assistance to developing countries, which should also be assisted in participating more in international treaty-making.

The **1992 Rio Declaration** by the nations at the Rio 'Earth Summit set out 27 principles with the goal of establishing a new and equitable

global partnership and cooperation, and working towards international agreements. A number of these principles are increasingly being incorporated in domestic legislation worldwide:

- Precautionary principle: measures to prevent potentially irreversible environmental harm shall not be postponed solely due to scientific uncertainty.
- Participation in decision-making and access to information.
- The polluter pays principle.
- The requirement that decisions with potential environmental impacts be subject to prior environmental impact assessments.
- The obligation to notify, inform, and consult with neighbours potentially affected by activities with adverse transboundary effects.

Emphasizing the role of law as an instrument for sustainable development, Principle 11 calls upon nations to enact effective environmental laws, including provisions for liability.

Since its creation in 1972 after the Stockholm UN Conference on the Environment, the **United Nations Environment Programme (UNEP)**, headquartered in Nairobi, has served an important catalytic function in developing environmental law, both in launching and servicing international environmental treaties, and by assisting developing countries do their domestic regulations. Started in 1982

and renewed in 1993, the so-called UNEP Montevideo Programme for the Development and Review of Environmental Law has promoted domestic environmental law as well as facilitating the more well-known numerous new international legal instruments (eg. on Ozone, Hazardous Waste Trade, Land-based Sources of Marine Pollution, Environmental Impact Assessment, Chemicals in Trade). Ongoing concerns addressed by UNEP include the participation of developing countries in drafting new conventions, assessing the effectiveness of and improving old ones, and implementing these international environmental agreements domestically.

Decided by UNEP's Governing Council to be a programme priority, the environmental law activities of **UNEP** are conducted by its **Environmental Law Unit** with assistance by officials from national governments and consultants. These continue to cover a wide range of sectors and problems: transboundary air pollution, ozone layer depletion, soils, forests, inland waters, coasts, and marine pollution, among others. **Mechanisms** incorporated in laws which are not only applicable to the environment include: dispute avoidance and settlement, impact assessment, education to raise awareness, public participation and access to information, as well as access to national administrative and

judicial processes. **Legal obligations** from various domestic and international sources which are enshrined in new legal instruments include duties to inform, consult, warn of danger, cooperate in emergencies, and compensate and restore, taking account of the preventive effects of assigning liability and accountability for environmental damages.

Other United Nations agencies like the **United Nations Development Programme (UNDP)** and the **Food and Agriculture Organization (FAO)** as well as international financial institutions such as the **World Bank** and regional development banks have added specialists to their legal staff to handle issues related to the environmental and social impacts of development projects and programs -- beyond pollution, deforestation, or flooding of lands, the particular problems of indigenous peoples, of women and of those displaced by projects who need to be resettled. Such complex challenges increasingly require responses that are trans-disciplinary ... and lawyers who understand sustainable development.

CHARTING TRENDS IN INTERNATIONAL ENVIRONMENTAL AGREEMENTS (1972 - 1992)

GENERAL	WILDLIFE	MARINE	AIR	OZONE	HAZARDS
1972 Stockholm Declaration	1971 Ramsar Convention on Wetlands for Waterfowl	IMCO/IMO Conventions 1954 Convention on Oil Pollution Prevention			1960/63/71/75 IAEA Nuclear Energy Liability Convention
	1972 UNESCO Convention on World Natural & Cultural Heritage	1969 Convention and 1973 Protocol on Civil Liability for Oil Pollution			
1974 OECD Principles on Transfrontier Pollution and "Polluter Pays"	1973 Washington Convention on International Trade in Endangered Species of Fauna & Flora (CITES)	1971 Oil Compensation Fund Convention			
		1972 London Dumping Convention			1985 FAO Code of Conduct on Pesticides
		1973 Convention and 1978 Protocol on Intervention on High Seas (MARPOL)			
1978 UNEP Principles on Shared Natural Resources	1979 Bonn Convention on Conservation of Migratory Species (CMS)	1982 UNCLOS Law of the Sea Convention	1979 Geneva UN/ECE Convention Long-Range Transboundary Air Pollution (LRTAP)		1986 IAEA Convention on Early Notice of Accidents
		1985 UNEP Principles on Land-based Sources of Marine Pollution	1985 Helsinki Protocol on SO ₂ (Sulfur Dioxide)	1985 UNEP Vienna Convention on Ozone Layer Protection	1987 UNEP Guidelines on Information on Chemicals in Trade
1987 UNEP Guidelines on Environmental Impact Assessment			1988 Sofia Protocol on NOX (Nitrous Oxides)	1987 Montreal Protocol on Phase-out of Ozone-depleting Substances (CFCs)	1988 UNEP Basel Convention Transboundary Movement of Hazardous Wastes
1991 UNE/ECE Convention on Transboundary Environmental Impact Assessment		1990 Convention on Oil Pollution Preparation Response & Cooperation	1991 Geneva Protocol on VOCs (Volatile Organic Compounds)	1991 London amendments to Montreal Protocol	1990 IAEA Code of Practice on Radioactive Waste
1992 Rio Declaration	1992 UNCED Convention on Biological Diversity		1992 UNCED Rio Convention on Climate Change		

IMCO/IMO = International Maritime Organization
IAEA = International Atomic Energy Agency
OECD = Organization for Economic Cooperation and Development

UNEP = United Nations Environment Programme
UNESCO = United Nations Education Science and Culture Org.
FAO = United Nations Food and Agriculture Organization
UN/ECE = United Nations Economic Commission for Europe

Source: Ralph Osterwold/
World Bank, Environmental Law Unit

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